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**COMMON PLEAS DIVISION**

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FANON RUCKER  
Clerk of Courts  
Hamilton County, Ohio  
CONFIRMATION 1142733**

**KENNETH CARTWRIGHT**

**A 2104421**

**vs.**

**DE FOXX ASSOCIATES INC**

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH JURY  
DEMAND**

**PAGES FILED: 8**

**COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

**KENNETH CARTWRIGHT  
7054 Kelly Marie Court  
Liberty Township, Ohio 45011**

**Plaintiff**

**-vs-**

**d.e. FOXX & ASSOCIATES, INC.  
324 W. 9<sup>th</sup> Street  
Cincinnati, Ohio 45202**

**Defendant**

**: Case No.**

**:**

**: Judge**

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**COMPLAINT WITH JURY DEMAND**

Now comes Plaintiff and for his complaint against the Defendant hereby states as follows.

**I. THE PARTIES**

1. Plaintiff is a former employee of d.e. Foxx & Associates, Inc. (“d.e. Foxx”) having been terminated from his employment on or about October 2, 2020.
2. Defendant d.e. Foxx is an employer as that term is defined under Ohio and federal law. It employs more than 20 employees within the State of Ohio.

**II. JURISDICTION AND VENUE**

3. This Court has jurisdiction over Plaintiff’s state claims pursuant to Ohio Revised Code Chapter 4112. This Court has concurrent jurisdiction of Plaintiff’s federal claims as stated in the case of *Elek v. Huntington National Bank* (1991), 60 Ohio St.3d 135.
4. Venue exists in the Court of Common Pleas of Hamilton County because the Defendant resides in Hamilton County and the events giving rise to the claims set forth in this Complaint occurred in Hamilton County.

### **III. STATEMENT OF FACTS**

5. Plaintiff is a former vice president and business development manager for d.e. Foxx. Plaintiff is over the age of 40.

6. During his employment, Plaintiff performed his job in a capable and competent manner.

7. On or about March 25, 2020, Plaintiff was affected with COVID symptoms and was advised by his physician to take a leave of absence from his employment.

8. On or about April 10, 2020, Plaintiff was notified by d.e. Foxx that he was being placed on a involuntarily leave of absence – furlough.

9. Plaintiff returned to his employment in late May 2020.

10. On or about July 13, 2020, Plaintiff was presented with a pretextual Performance Improvement Plan (“PIP”) which was impossible to meet.

11. Thereafter, Plaintiff was terminated from his employment on October 2, 2020 for allegedly failing to meet the conditions set forth in the July 2020 PIP.

### **IV. CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION (Age Discrimination in Violation of Federal Law)**

12. Plaintiff realleges the allegations contained in paragraphs 1 through 11 as if fully rewritten herein.

13. Upon information and belief, Plaintiff states that he was replaced by a substantially younger individual and that he was treated differently than similarly situated substantially younger individuals.

14. Plaintiff’s termination by d.e. Foxx occurred because of his age in violation of 29 U.S.C. §626 et seq. (the “ADEA”).

15. As a direct and proximate result of d.e. Foxx's unlawful conduct, Plaintiff is entitled to all damages including liquidated damages and reasonable attorney's fees in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(Age Discrimination in Violation of State Law)**

16. Plaintiff realleges the allegations contained in paragraphs 1 through 15 as if fully rewritten herein.

17. Plaintiff states that d.e. Foxx's actions in terminating him because of his age is a violation of Ohio Revised Code §4112.14.

18. As a direct and proximate result of d.e. Foxx's unlawful actions, Plaintiff is entitled to all relief as set forth in this section including reinstatement.

**THIRD CAUSE OF ACTION**  
**(Violations of the Americans with Disabilities Act)**

19. Plaintiff realleges the allegations contained in paragraphs 1 through 18 as if fully rewritten herein.

20. Plaintiff states that being affected with COVID is a disability under the Americans with Disabilities Act ("ADA").

21. d.e. Foxx placed Plaintiff on involuntary leave and terminated him because of his disability in violation of federal law.

22. As a direct and proximate result of d.e. Foxx's unlawful conduct, Plaintiff is entitled to all remedies as set forth under the ADA.

**FOURTH CAUSE OF ACTION**  
**(Violation of State Law Chapter 4112.02(A) and 4112.99)**

23. Plaintiff realleges the allegations contained in paragraphs 1 through 22 as if fully rewritten herein.

24. Plaintiff's affliction with COVID is a disability as defined under Ohio Revised Code Chapter 4112.

25. d.e. Foxx's actions in placing Plaintiff on an involuntary leave of absence and terminating him was because of his disability in a violation of Ohio Revised Code Chapter 4112.02(A).

26. As a direct and proximate result of d.e. Foxx's unlawful conduct, Plaintiff is entitled to all remedies as set forth under Ohio Revised Code §4112.99.

27. On or about March 18, 2021, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission. ("EEOC"), a copy of which is attached herein as Exhibit A.

28. On September 28, 2021, the EEOC issued a Notice of Right to Sue. A copy of that document is attached herein as Exhibit B and incorporated by reference.

29. Defendant's actions were wanton and in willful violation of Plaintiff's legal and employment rights.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount to be determined at trial, but believed to be in excess of \$25,000; reasonable attorney's fees, prejudgment interest, liquidated damages, punitive damages, reinstatement, and any other relief this Court deems appropriate. Plaintiff requests a trial by jury.

Respectfully submitted,

/s/ Mark J. Byrne

**MARK J. BYRNE (0029243)**

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